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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. ~~1785~~

LEONARD RUSSO,

Petitioner,

—v—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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Of Counsel

IN THE

Supreme Court of the United States

October Term 1970

LEONARD RUSSO,

Petitioner,

—v—

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY MEMORANDUM

Argument

The memorandum of the United States Government in opposition to the Petition for a Writ of Certiorari herein does not fairly meet the issues or law raised in Point I of the Petition.

The Government tacitly admits that there has never been any explanation or excuse for the delay in indictment between December, 1967, when Herbert Itkin "surfaced" and the return of the indictment herein on May 27, 1968. Thus, as indicated by the "Questions Presented" portion of the original Petition herein, this case involves a somewhat different proposition from that presently under consideration by this Court in *U. S.* v. *Marion,* where the question presented relates solely to pre-indictment delay that was not "purposeful, oppressive or actually prejudicial to the defense".

It is our most respectful submission that for this Honorable Court to comprehensively rule on the question of pre-indictment delay, it would be desirable that Certiorari be granted in the instant matter where, clearly, the almost five years of pre-indictment delay was purposeful; where some six months of the delay remains unexplained and unaccounted for; and where there has been prejudice in that the key man in the entire fact pattern, Sam Giamonco, died during the pre-indictment period.

We also wish to point out to the Court that the Government has totally failed to address itself to the case of *Jones* v. *Superior Court of Los Angeles County,* 3 Cal. 3rd. 734, 91 Cal. Reptr. 578, and the questions of law raised thereby as set forth in the original Petition herein.

CONCLUSION

For the reasons above set forth, the Petition for a Writ of Certiorari herein should be granted, or in the alternative, action in this case should be withheld pending decision of the court in *U. S.* v. *Marion.*

Respectfully submitted,

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